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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,307	12/08/2003	Pooneh Mohajer	MHJ-03902/16	2168
25006	7590	01/09/2006	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			FLANAGAN, BEVERLY MEINDL	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

6

Office Action Summary	Application No. 10/730,307	Applicant(s) MOHAJER, POONEH	
	Examiner Beverly M. Flanagan	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-11 is/are allowed.
- 6) ☒ Claim(s) 1 and 3-6 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

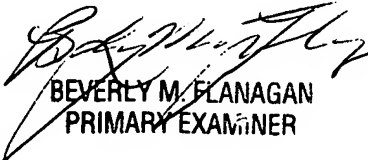
Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


BEVERLY M. FLANAGAN
PRIMARY EXAMINER

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Entry of Amendment

The amendment filed October 21, 2005 has been entered and made of record.

Previously Set Forth Rejections

The 35 U.S.C. § 102(b) rejection of claims 1, 2, 4, 6, 7, 10 and 11 as being anticipated by Francois (U.S. Patent No. 6,432,048) is hereby *maintained* with respect to claims 1, 4 and 6. The 35 U.S.C. § 103(a) rejection of claims 3 and 8 as being unpatentable over Francois (U.S. Patent No. 6,432,048) is hereby *maintained* with respect to claim 3. The 35 U.S.C. § 103(a) rejection of claims 5 and 9 as being unpatentable over Francois (U.S. Patent No. 6,432,048) in view of Mayes (U.S. Patent No. 5,460,165) is hereby *maintained* with respect to claim 5. The 35 U.S.C. § 112, second paragraph, rejection of claims 5 and 9 has been *overcome*.

The following reiterated grounds of rejection are set forth:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Francois (U.S. Patent No. 6,432,048).

In regard to claims 1 and 6, Francois teaches a sheath that is tubular in cross section from its proximal end to its distal end for a speculum 30 where the sheath comprises a disposable tubular member 33 that has a pair of distal pockets 34 and 35 that are dimensioned to receive the distal ends 36 and 37 of one of the blades 31 and 32 of speculum 30 (see Figures 5 and 6 and col. 4, lines 30-40). Figures 5 and 6 show that the tubular member 33 has open proximal end distal ends and that the pockets 34 and 35 are formed on the interior wall of tubular member 33 at diametrically opposed points. Figures 5 and 6 also show that pockets 34 and 35 have openings at their proximal ends and terminate in closed sections disposed adjacent to the distal end of the sheath. **In regard to claim 4**, Figures 5 and 6 show that tubular member 33 has an enlarged diameter section at the proximal end.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Francois (U.S. Patent No. 6,432,048).

In regard to claim 3, Francois is silent as to a lubricated coating on the exterior of tubular member 33. However, the examiner takes official notice that the practice of applying a lubricated coating to a speculum prior to its insertion is well known and conventional. Furthermore, since there are many prior art examples of sheaths or covers for speculums, the examiner similarly takes official notice that applying a lubricated coating to a sheath or cover on a speculum prior to its insertion is also well known in the art. Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to apply a lubricated coating on the tubular member 33 of Francois prior to insertion of the tubular member 33 and speculum 30.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Francois (U.S. Patent No. 6,432,048) in view of Mayes (U.S. Patent No. 5,460,165).

In regard to claim 5, Francois is silent as to the tubular member 33 being formed from latex. However, Mayes discloses a similar sheath 64 for covering a speculum 10 where sheath 64 is preferably constructed from latex (see col. 4, lines 1-8). Mayes thus demonstrates that sheaths for speculums that are fabricated from latex are well known in the art. Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to fabricate the tubular member 33 of Francois from latex, in the manner disclosed by Mayes.

Allowable Subject Matter

Claims 7-11 are allowed.

Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments, with respect to claim 1, filed October 21, 2005 have been fully considered but they are not persuasive. Applicant argues that the sheath 22 of the instant invention includes a pointed cylindrical tip 32 which extends beyond the distal ends of the pouch sections 28 and 30 which retain the speculum blades 12 and 14 whereas in the Francois reference, the distal ends of the pockets 34 and 35 cover the distal ends 36 and 37 of the speculum blades without any further forward extending structure. As recited in amended claim 7, this structure is fully described and defined over the Francois reference. However, in amended claim 1, it is only recited that the pouches terminate in closed sections disposed adjacent to the distal end of the sheath. Claim 1 does not recite distally pointed tips on the sheath, as is recited in amended claims 2 and 7. Accordingly, the Francois references meets all of the limitations of amended claim 1.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

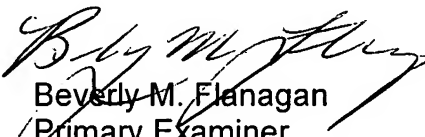
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3739

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Beverly M. Flanagan
Primary Examiner
Art Unit 3739
